

**REMARKS**

The Office Action mailed June 18, 2010, has been received and carefully considered.

A Declaration Under 37 C.F.R. §1.131 is submitted herewith to eliminate Applicant's earlier publication titled "Evaluation of metabolic effectiveness of exercise habit using respiratory gas analysis and a newly developed cookie test" as a prior art reference against the claims in the present Application.

In this Amendment, the Title and Abstract have been amended to reflect the subject matter of the elected claims. Claims 1, 3-5, 10, and 12-15 have been amended. Claim 2 has been cancelled as no longer needed since the limitations of claim 2 now appear in amended independent claim1. Claims 9, 11, and 14, which previously depended from claim 2, have been cancelled rather than amended to change their dependency to claim 1 to forestall the presence of duplicate claims in the Application. Claims 4, 5, and 13 already recite such subject matter, respectively.

To the best of the undersigned attorney's information and belief, these changes contain no new matter for the reasons given in the remarks which follow.

**Claims 1, 3-5, 10, 12, 13, and 15 are now active in the Application and are submitted to be in allowable condition. Claim 1 is independent.**

Claims 6-8 have been withdrawn as non-elected in responding to a restriction requirement. When the Examiner finds elected claimed claims 1, 3-5, and 9-15 allowable, Applicant hereby authorizes the Examiner to cancel withdrawn, non-elected claims 6-8, without disclaimer of the subject matter thereof and without prejudice to the filing of a Divisional Application directed thereto, in an Examiner's Amendment.

**Claim Changes and Support**

Claim 1 has been amended to include the limitations previously recited in claim 2 so that support is manifest.

**I. The objection to claims 1-5 and 9-15 on formal grounds is believed corrected by the amendments made herein to these claims.**

The preamble of claim 1 now recites, "A test food for testing for detecting metabolic factors in life style-related diseases". This change is believed to overcome the difficulty the Examiner mentions so that this ground of objection should be withdrawn.

**II. The rejection of claims 1, 2, 4, 5, 9, 11, 13, and 14 under 35 U.S.C. §102(b) as anticipated by Harano et al. (hereinafter “Harano Abstract”) is believed rendered moot by submission herewith of a Declaration Under 37 C.F.R. §1.131 that eliminates the Abstract as a prior art reference.**

**III. The rejection of claims 1, 4, 5, and 13 under 35 U.S.C. §102(b) as anticipated by Palmason et al. (WO97/02050) is respectfully traversed.**

Claim 1 has been amended to include the limitations previously recited in claim 2.

Since claim 2 was not rejected as anticipated by Palmason, Applicant believes that independent claim 1 is not anticipated by Palmason et al. so that this ground of rejection should be withdrawn for independent claim 1, as well as the claims depending there from including claims 4, 5, and 13.

Moreover, while the Examiner has not rejected claims 1, 4, 5, and 13 as obvious over the disclosure of Palmason et al., Applicant takes this opportunity to state that Applicant believes that one of ordinary skill in this art would find no teaching or suggestion in the disclosure of Palmason et al. to modify the test meal of Palmason et al. in ways needed to meet Applicant's claims 1, 4, 5, ad 13 as amended. Specifically, the disclosure of Palmason et al. does not teach or suggest a test food for detecting metabolic factors in life style-related diseases, comprising, in terms of single test ingestion: from 73 to 77 grams of carbohydrates; and from 15 to 30 grams of fat, as now recited in amended independent claim 1. In view of the foregoing distinctions, Applicant believes that claims 1, 4, 5, and 13 are not obvious in view of the disclosure of Palmason et al.

**IV. The rejection of claims 3, 10, 12, and 15 under 35 U.S.C. §103(a) as unpatentably obvious over Harano et al. (hereinafter “Harano Abstract”) is believed rendered moot by submission herewith of a Declaration Under 37 C.F.R. §1.131 that eliminates the Harano Abstract as a prior art reference.**

**V. The rejection of claims 3, 10, 12, and 15 under 35 U.S.C. §103(a) as unpatentably obvious over Palmason et al. (WO97/02050) is respectfully traversed.**

Independent claim 1 has been amended to include the limitations previously recited in claim 2.

Since claim 2 was not rejected as obvious over Palmason et al., Applicant believes that independent claim 1 is not obvious over the disclosure of Palmason et al. In particular, Applicant believes that one of ordinary skill in this art would find no teaching or suggestion in the disclosure of Palmason et

al. to modify the test meal of Palmason et al. in ways needed to meet Applicant's claims as amended. Specifically, the disclosure of Palmason et al. does not teach or suggest a test food for detecting metabolic factors in life style-related diseases, comprising, in terms of single test ingestion: from 73 to 77 grams of carbohydrates; and from 15 to 30 grams of fat, as now recited in amended independent claim 1.

In view of the foregoing distinctions, Applicant believes that claims 1, 3, 10, 12, and 15 are not obvious in view of the disclosure of Palmason et al. so that this ground of rejection should be withdrawn for independent claim 1, as well as the claims depending there from including claims 3, 10, 12, and 15.

**VI. The rejection of claims 2, 9, 11, and 14 under 35 U.S.C. §103(a) as unpatentably obvious over Palmason et al. (WO97/02050) in view of Harano et al. (hereinafter "Harano Abstract") is believed rendered moot by submission herewith of a Declaration Under 37 C.F.R. §1.131 that eliminates the Harano Abstract as a prior art reference.**

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicants submit that claims 1, 3-5, 10, and 12-15, and the Application are in condition for allowance. Reconsideration and passage of this case to issue are therefore requested.

Should the Examiner consider that a conference would help to expedite the prosecution of this Application, the Examiner is invited to contact the undersigned to arrange for such an interview.

If any fee is deemed due, the Commissioner is hereby authorized to charge the same to our Deposit Account No. 18-0002 and is requested to advise us accordingly.

Respectfully submitted,



\_\_\_\_\_  
Robert H. Berdo, Jr. (Reg. No. 38,075)

Rabin and Berdo, PC  
CUSTOMER NO. 23995  
1101 14th Street, N.W., Suite 500  
Washington, D.C. 20005  
Tel.: (202) 371-8976  
Fax: (202) 408-0924

RHB/AJW/vm

Amendment

(10/568,759)